

Spokane Chapter of CAPR-Citizens' Alliance for Property Rights

May 30, 2014

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Department of Ecology  
Bellingham Field Office  
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RE: Comments Re. DOE-Preliminary Draft Rule for Spokane River Instream Flow Rule

May 30, 2014

The Spokane Chapter of CAPR (Citizens' Alliance for Property Rights) wishes to again thank your Spokane DOE employees for presenting at our March 27th meeting concerning the not yet released Spokane River Instream Flow Rule. Our chapter would like to take this opportunity to ask questions and add comments into the permanent record.

1. Your document entitled, Frequently Asked Questions states, "The rule would give the Spokane River a water right, much like we give individuals, farms and municipalities. However, at the 5-14-14 Spokane DOE meeting, your employee Guy Gregory when asked how the river can have a right answered that a water right is granted to people to preserve uses and this is a community right, not a right for the river which is a misnomer. His statement seems to contradict the way the various DOE' documents state that the river has a water right. Please explain this contradiction.

2. The Washington State Constitution mentions in Article 1 (Declaration of Rights), Section 1 that "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain INDIVIDUAL RIGHTS." In Section 3, under Personal Rights, "No person shall be deprived of life, liberty, or property, without due process of law." Community rights and or rights for inanimate objects such as rivers are not listed in our WA State Constitution under the Declaration of Rights. Thus, it appears that DOE must align with protection of individual rights, not community rights or rights for an inanimate river in order to meet the lawful conditions as set forth in our most foundational document, the Washington State Constitution.

3. On March 27th, your employee Keith Stoffel when asked if wells would be metered said that existing, permit exempt wells won't be metered. Rusty Post said that private wells are drawing very little water in the aquifer region. We understand that the rule was not released yet. However, the rule states on p 6, 5, "All future new surface and groundwater appropriations,

other than rainwater collection, shall measure withdrawals.” Thus, water meters will be installed on new wells in the Spokane aquifer region after the rule has taken effect. Thus it appears that with this rule a precedent to meter wells has been established in Eastern WA. Most private property owners who use water from their own wells do not want to have their wells metered or pay for water since many have paid thousands of dollars and already pay a utility bill to pump their wells. However, DOE has now just established that new wells will be metered in the Spokane aquifer region. CAPR Spokane strongly objects to metering of any wells in Eastern WA and strongly rejects this portion of your new rule. We think that this is just the beginning of requirements for meters for all domestic, exempt wells in Eastern WA.

In addition, all exempt wells, whether those that exist now, or in the future, should not require metering, since 98% of the ground water is returned to the ground via a septic system in rural areas.

4. RCW 90.54.005, that was passed in 1971, mentions that water is needed to meet the needs of people, farms, and fish. Why isn't water for agriculture mentioned in your Instream flow rule?

5. On p 2, Federal and tribal reserved rights will not be affected. Why not or upon what authority do they meet the category of exemption? Will tribal members eventually be able to set large nets along the Spokane River to catch fish? Why or why not?

6. This rule will be similar to the rule that is in effect in the Little Spokane River area that impacts 125 junior water right holders. Apparently, in the summer and early fall when water flow is diminished, they can get their outside water shut off. Thus, their crops, lawns and gardens could die and water to water stock has to be hauled in. Please supply CAPR with a current list of senior right holders and current junior water right holders and those who have applied for water rights in the Spokane River Aquifer area so we can better understand who will be impacted. Also, please clarify if senior water right holders would ever be impacted by this rule. Would senior water right holders ever get their water shut off and will they ever be able to assign their water rights? Please clarify.

7. See p 4. The reports do not show how water well use could impact base flow in the Spokane River. Please provide all scientific studies which show a correlation between ground water withdrawal via exempt well water and surface water that flows in the Spokane River. The reports do not show how well water withdrawals can impact base flow in the Spokane River. Will all new wells impact the base flow? Please provide studies that prove this correlation.

8. On p 5, you report that the instream flows are based on watershed planning and recommendations from different WRIAs in the Spokane area. However, an Ecology approved facilitator conducted the meetings for the planning unit. The facilitator had an agenda to promote sustainability via a predetermined process which aligned with your own website's Sustainability page. What percentage of citizens that are not government employees or quasi

government employees (water purveyors) or members of environmentalist groups have been involved in these planning processes? This could be easily determined by your sign in sheets.

9. The only scientific research that has been offered to establish ideal flow levels on the Little Spokane River are those pertaining to fish....two or three varieties....the number has been stated by DOE both ways. Which is it? (The only data cited is from AVISTA working under federal guidelines.) The DOE Q and A document we were referred to by Rusty Post, states that there are numerous other entities need's that should be considered when looking at what constitutes a "healthy stream": "Once adopted in rule (the amendment to 17555-010) the instream flows are water rights that must be protected from harm (impairment) by future withdrawals. Instream flows also become the regulatory flow threshold used by Ecology to determine whether there is water to withdraw for new uses while PROTECTING FISH AND OTHER INSTREAM RESOURCES AND SENIOR WATER RIGHTS. What are those other resources that need to be protected? (How will the rule affect water quality? How will it affect recreation?)

10. What will be the effect of flow rates on municipal water availability and costs? What would be the effect of this rule on the region's economic interests--businesses, cities, counties, families? DOE Q and A says that "Ecology is required by law to write several economic analyses when adopting a new rule. Where are these?

11. The Q and A document notes that there has been no adjudication started in the Spokane River Basin to determine "who has a valid water right, how much water can be used, and who has priority during shortages." DOE needs to give the citizens an estimate of what this process would cost, how long it would take, and again, how would it affect our city and county government costs/taxes if they have to defend our water rights in court? Additionally, then, THE SENIOR WATER RIGHTS HAVE NOT BEEN DEFINED YET BY ECOLOGY, ALTHOUGH THEY ARE CONSTANTLY SAYING THEY WILL NOT BE IMPACTED.

12. From DOE's website: "The only section of WAC 173-555 under consideration for amendment is 010, the general provision that addresses applicability of this rule." Applicability is the definition of why this law was created and for whom or what purpose. Does this amendment not make new law, changing the intent and parameters of the original law? Is making new law within the authority of DOE or is it rather under the authority of our state legislature?

13. The speed of implementing the instream flow rule is moving forward way too quickly. We strongly object to this without having all of our questions answered and Best Available Science data documented.

We look forward to hearing back from you regarding these questions and comments. Please place these comments and questions with your itemized responses in the permanent record.

Sincerely,

Cindy Zapotocky President  
Kevin Paulson Vice President  
Gloria Clark Secretary  
Martin Howser Treasurer  
Alene Lindstrand Community Relations Representative  
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